

ALUC Review of Local Actions

OVERVIEW

Review of local agencies' land use plans and airport plans and certain other land use projects and actions is one of the two specific duties of airport land use commissions (preparation of compatibility plans being the other). The process which should be followed in this review depends upon three factors:

- The type of local action involved;
- Whether the ALUC has adopted a compatibility plan; and
- What action the local agency has taken with regard to making its general plan consistent with the ALUC's plan.

This chapter discusses the requirements for ALUC reviews of local actions, the procedures to be followed, and the substance of the reviews. Figures 4A and 4B depict flow charts identifying the steps involved in the ALUC review process for land use actions and airport plans, respectively.

This chapter examines:

- The types of local actions subject to ALUC review;
 - The process to be used by ALUCs in conducting compatibility reviews;
 - The types of compatibility factors to be examined in the reviews; and
 - Judicial remedies available in the event of a legal dispute over an ALUC decision.
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ALUC REVIEW REQUIREMENTS

One of the fundamental responsibilities assigned to airport land use commissions by the Aeronautics Act is to review particular types of local actions for compliance with the criteria and policies set forth in the commissions' adopted compatibility plans.

The law specifies that local jurisdictions must refer certain actions to the ALUC for review. Land use actions included in this category are proposed adoption or amendment of general plans, specific plans, zoning ordinances, and building regulations affecting land within an airport influence area. Also required to be submitted for ALUC review are several types of airport development plans. Referral of other local actions—primarily individual development projects—is required in some instances, but voluntary in others. The following discussion outlines the ALUC review requirements and options for each of these action types.

The question of how an ALUC should go about reviewing each of these types is examined later in this chapter.

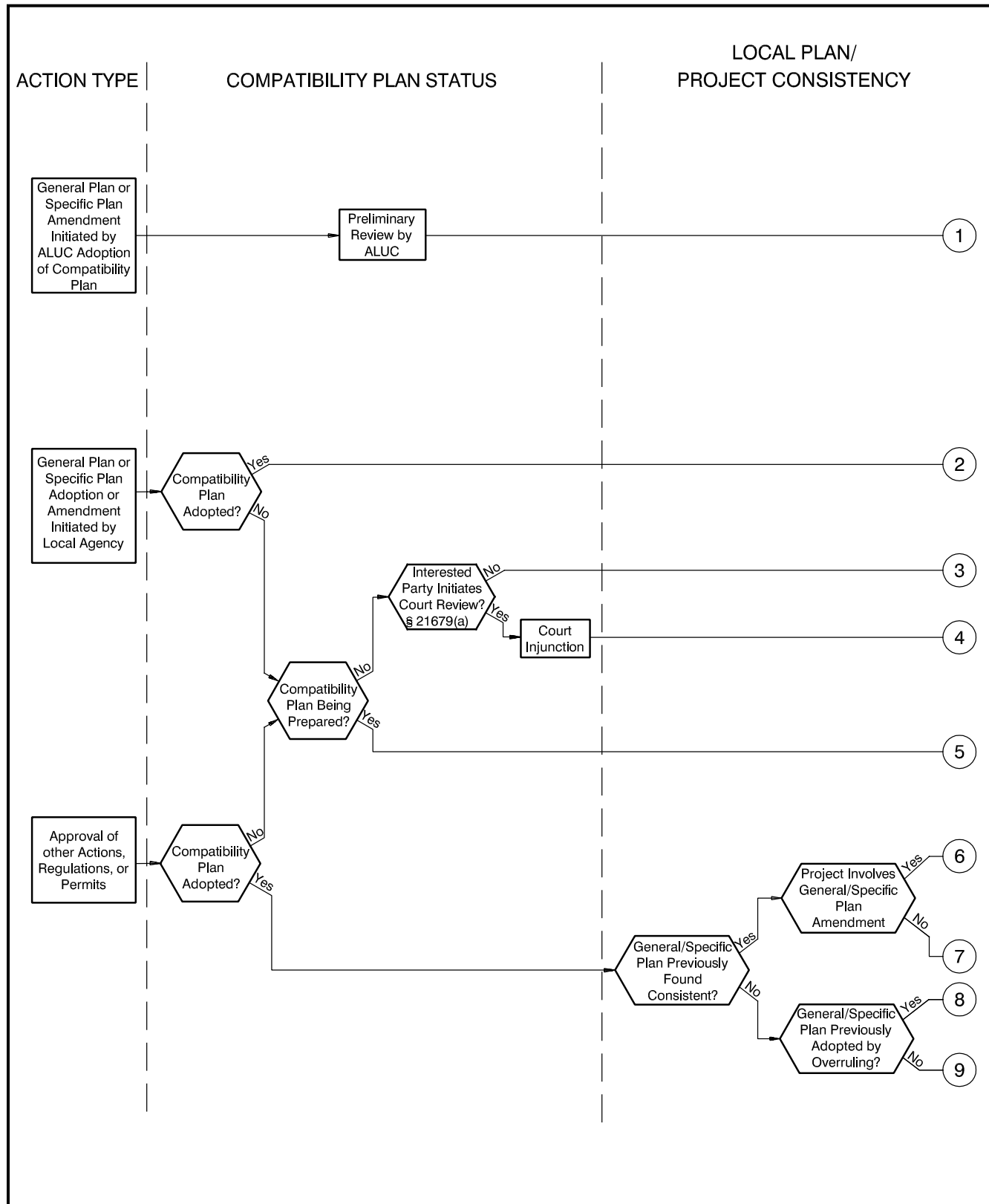


FIGURE 4A
ALUC Review Process for Land Use Actions

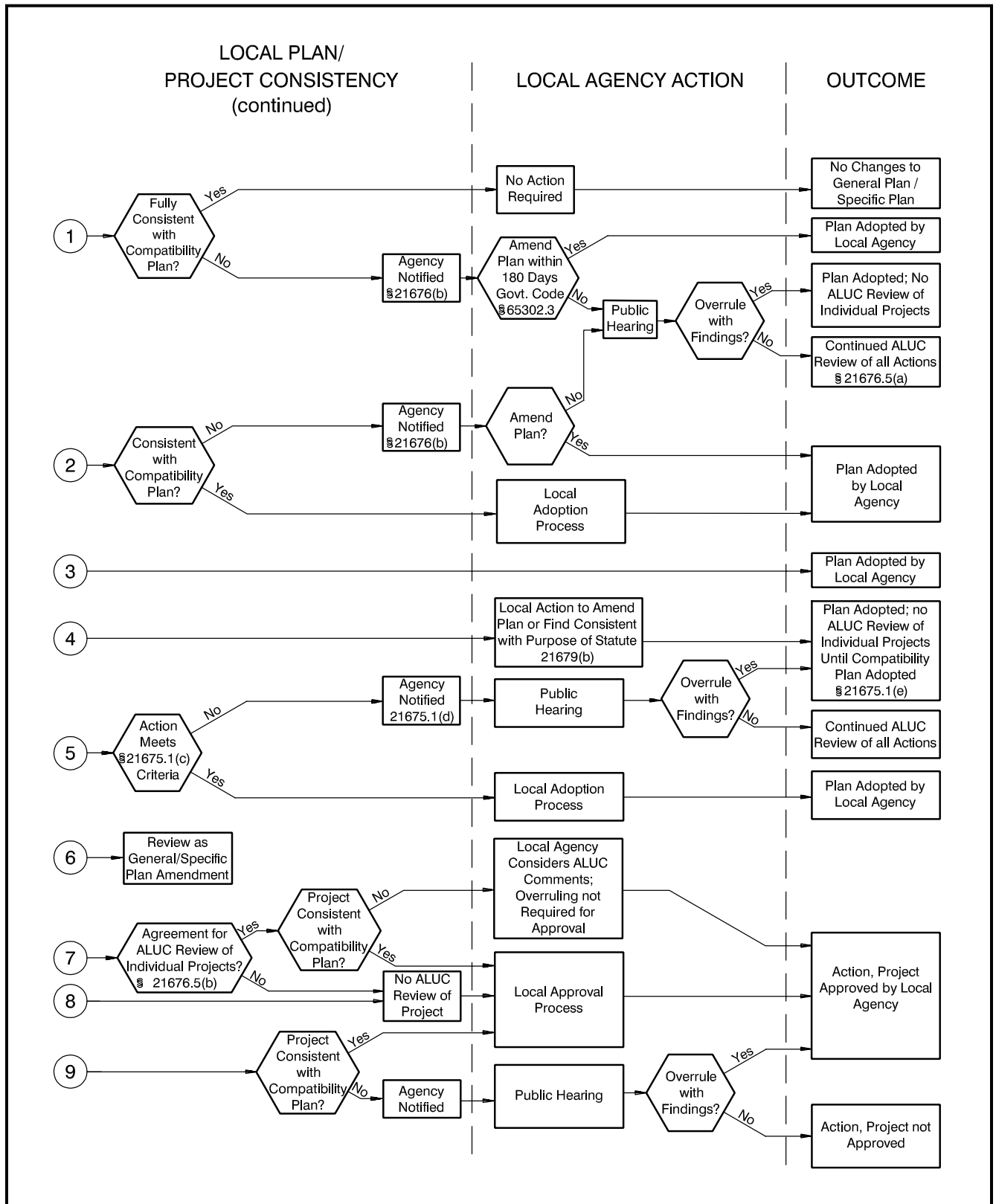


FIGURE 4A CONTINUED

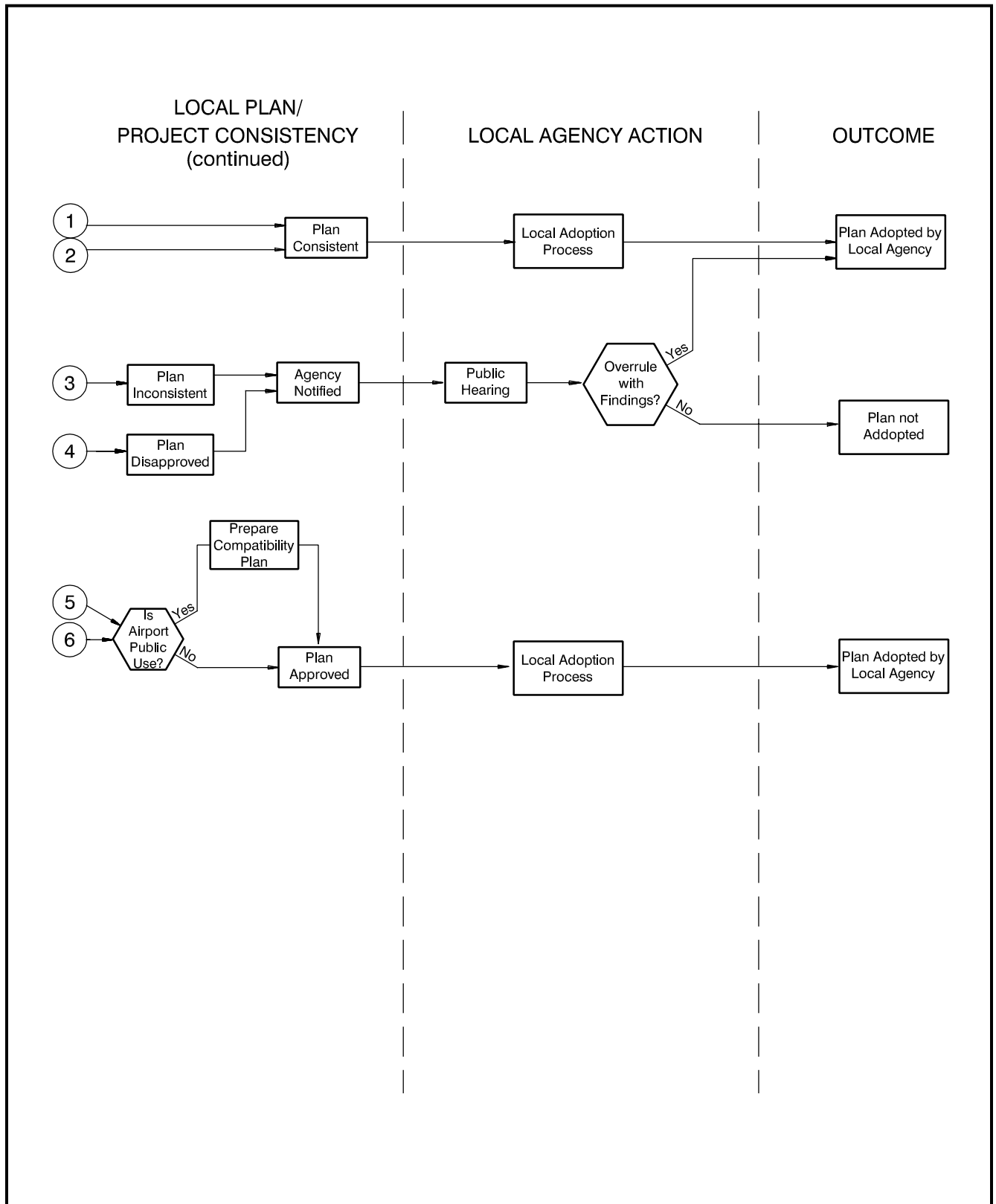


FIGURE 4B CONTINUED

Actions for which ALUC Review is Mandatory

General Plans and Specific Plans

Any proposal by a county or city to adopt a general plan or specific plan must be referred to the ALUC for review if the boundaries of the plan encompass the influence area of a public-use airport. Amendments to such plans also must be referred to the ALUC if the change affects locations within an airport influence area. Referral to the ALUC must take place prior to the local jurisdiction's action to adopt or amend the plan (Section 21676(b)).

The impetus for referral of a general plan or specific plan to the ALUC may come from either of two situations:

- A proposal initiated by the local jurisdiction to adopt or amend an affected plan; or
- The requirement for the local jurisdiction's plans to be reviewed for consistency with an ALUC's newly adopted or amended compatibility plan.

The requirement for submittal of general plans and specific plans exists regardless of whether the ALUC has adopted a compatibility plan for the airport. If a compatibility plan has not been adopted, then the airport "vicinity" is defined to mean the study area for such plan or the land within two miles of the airport boundary (Section 21675.1(b)). Once a compatibility plan has been adopted, the airport influence area as defined therein determines the locations which comprise the airport vicinity.

Two special considerations apply to the situations where ALUC adoption or amendment of a compatibility plan is the impetus for the local plan review. First is that, under these circumstances, ALUCs should take the initial step to identify where additions or changes to the local jurisdictions' plans will be necessary. The need for taking this step is primarily a matter of practicality.

- Local jurisdictions may be less inclined to oppose a compatibility plan if they understand the implications that its adoption will have on their plans and policies.
- Most ALUCs and their staffs have more expertise with which to point out inconsistencies than do local agencies.
- Proposed amendments to general plans and specific plans are more likely to be complete in terms of meeting the requirements of being consistent with the compatibility plan (conflicts will be eliminated and important procedural matters addressed).
- The amendment process can be accomplished more quickly.

The last of the above factors is significant because of the second special consideration. State law requires not only that local jurisdictions either amend their general plans and any affected specific plan to be consistent with the ALUC's plan or take the steps necessary to overrule the ALUC, but also that this action be taken within 180 days of when the ALUC adopted or amended its plan (Government Code, Section 65302.3). Preliminary ALUC review of the affected plans enable the 180-day time limit to more

As noted in Chapter 5, ALUCs should recognize that the 180-day schedule can be difficult for local jurisdictions to achieve, especially if extensive modifications to their plans are necessary. Although ALUCs do not have the authority to change the 180-time limit, they can indicate that they will not bring any action against a local government for taking extra time. As a practical matter, many ALUCs consider the 180-day time limit to begin as of when printed copies of the compatibility plan or amendment thereto are formally distributed to the affected jurisdictions.

easily be met because part of the review process takes place before the clock begins running. Note, though, that even when the ALUC conducts a preliminary review, the specific county or city proposals for general plan and specific plan modifications still must be submitted to the ALUC for formal review.

Ordinances and Regulations

ALUC review of county or city proposals to adopt or amend zoning, building, and other land use ordinances and regulations is required in instances where those ordinances and regulations have implications for airport land use noise or safety compatibility. Despite the potential importance of zoning, building, and other land use ordinances and regulations to compatibility planning objectives, the review requirement is undoubtedly overlooked more often than not.

The State Aeronautics Act explicitly requires ALUC review of these policy instruments during the period prior to when the general plan or specific plan has been made consistent with the commission's compatibility plan or has been adopted by overruling the commission (Section 21676(b)). Subsequent to when a county or city has taken action to amend its general plan and specific plans, review of proposed new or revised zoning ordinances and building regulations remains mandatory because of their direct linkage to the general plan and specific plans. Components of zoning ordinances and building regulations are normally essential to implementation of compatibility criteria and thus to the achievement of consistency between the local plans and the ALUC's plan. In effect, these instruments become extensions of the local plans and, with respect to ALUC review requirements, must be treated in the same manner.

This review requirement especially applies when a proposed new or revised zoning ordinance or building regulation would have general applicability throughout the community or at least to lands within the airport influence area. ALUC reviews of parcel-specific changes to zoning or other regulations are also required when the parcels are within the airport influence area. This is true even when a general plan amendment is not involved. Again, the rationale for reviews being mandatory is that a determination that a general plan is consistent with the compatibility plan almost always depends upon the details, including parcel-specific details, found in implementing zoning ordinances and building regulations.

Airport Plans

ALUC review of three categories of airport plans is mandatory in accordance with state law. This review requirement is not affected by any previous action by the local agency regarding its general plan or specific plan.

- **Airport Master Plans**—Section 21676(c) mandates that “each public agency owning any airport within the boundaries of an airport land use commission plan shall, prior to modification of its airport master plan, refer such proposed change to the airport land use commission.” The

As discussed later in this chapter, careful ALUC review of the relevant ordinances and regulations in conjunction with the assessment of general plans and specific plans for consistency with the compatibility plan is essential.

Also sometimes subject to ALUC review are proposals for nonaviation development of airport property. See the discussion in the following section.

As used in this section of the law and in the section (discussed below) applying to airport expansion, construction plans should be thought of as construction proposals. These sections are not intended to require that ALUCs review the actual engineering construction drawings, only the overall layout plan.

State permits are required only for public-use or special-use facilities. Agricultural and certain other essentially restricted-use airports are exempt. Also, in the context of the aeronautics law, a heliport is considered to be a type of airport. Plans for construction of new heliports, including hospital heliports (a type of special-use facility) are therefore subject to ALUC review.

commission must then determine whether the proposed master plan is consistent or inconsistent with the adopted compatibility plan for that airport.

- **Construction Plans for New Airports**—The requirement for review of construction plans for new airports arises not out of the airport land use commission portion of the State Aeronautics Act (Chapter 4, Article 3.5), but from the regulation of airports portion of the law (Chapter 4, Article 3). Section 21661.5 of this article states that no application for the construction of a *new* airport may be submitted to any local, regional, state, or federal agency unless that plan has been both:
 - Approved by the board of supervisors of the county, or the city council of the city, in which the airport is to be located; and
 - Submitted to and acted upon by the appropriate airport land use commission.
- **Airport Expansion Plans**—Section 21664.5 of the Aeronautics Act applies the above review requirements to any airport *expansion* project which entails amendment of the Airport Permit issued by the California Department of Transportation. *Airport expansion* is defined to include:
 - The construction of a new runway;
 - The extension or realignment of an existing runway; and
 - The acquisition of runway protection zones or any interest in land for the purpose of the above.

Other Actions Potentially Subject to ALUC Review

Individual Land Use Development Projects

In the early years of ALUCs' existence, state law required that all local plans, projects, and other actions affecting the vicinity of an airport be submitted to the responsible commission for review. For airports located in growing areas, this process proved to be burdensome. The law was therefore amended to place emphasis on general plans and specific plans as the levels of local planning at which compatibility between airports and their surroundings should primarily be addressed. The current law greatly limits the need for ALUC review of local actions once the ALUC has adopted a compatibility plan and local general plans and specific plans have been made consistent with it.

Airport land use commissions can require the review of "all actions, regulations, and permits" involving the vicinity of a public airport under only two circumstances:

- Prior to ALUC adoption of a compatibility plan for the airport all such actions shall be submitted for review (Section 21675.1(b)); and
- When a local agency has neither revised its general plan or specific plan to be consistent with the commission's compatibility plan nor overruled the commission with regard to these plans the ALUC may require the local agency to submit all such actions for review (Section 21676.5(a)).

Beyond these two circumstances, the need for submittal of individual development proposals (if they do not involve general plan, specific plan, or zoning changes) is subject to mutual agreement between the ALUC and the affected jurisdiction (Section 21676.5(b)). Many ALUCs request that certain major land use actions continue to be submitted for review. Such actions might include very large developments where site design (the distribution of dwellings, areas of intensive use, open lands, etc.) and other factors such as building height have potential compatibility implications even when the overall development is basically acceptable. A full list of these types of development actions should be included in the compatibility plan, the local general plan, or in some other policy document agreed upon by both entities.

Three very important points need to be emphasized with regard to the review of individual land use development proposals whether by the ALUC or the local jurisdiction.

- **ALUC Reviews Are Voluntary Only if General Plan Is Fully Consistent with Compatibility Plan**—If individual development projects are not to be submitted to the ALUC for review, then these projects must be reviewed by the responsible county or city. The general plan or other supporting policies therefore must contain sufficient detail regarding compatibility criteria and review procedures to assure compliance with policies which the ALUC sets forth in its compatibility plan. If this is not done, then the general plan is not fully consistent with the compatibility plan and submittal of individual development projects for ALUC review would continue to be mandatory.
- **Local Agency Reviews Must Be Based on ALUC Criteria**—The failure of a local agency's general plan to restate or reference ALUC criteria and procedures—even if that plan has been found consistent with the ALUC plan—does not relieve the agency of the obligation to require individual development proposals to meet the ALUC standards. Any exceptions require that the local agency take the special steps necessary to overrule the ALUC. A local agency's silence on these matters can be taken to indicate its acquiescence to the standards set by the compatibility plan. If a land use development project were to be challenged under these circumstances, a court could be expected to hold the project to the ALUC's standards.
- **Nonmandatory ALUC Project Reviews Are Advisory**—Under the circumstances when a general plan has been made *fully* consistent with the ALUC's compatibility plan, not only is submittal of most land use development proposals for ALUC review voluntary, but, when submitted, the reviews become advisory. Moreover, when—but *only* when—an ALUC review is advisory, the local jurisdiction does not need to take the special steps necessary to overrule the commission if it disagrees with the outcome of a review. (While the advisory nature of ALUC reviews under these circumstances is not spelled out in the Aeronautics Act, it is clear that, if this were not the case, then the local agency could simply cancel the review agreement and proceed without any ALUC involvement.)

Even when a jurisdiction agrees to continue to submit major land use actions, ALUC review of a project is normally not necessary if a related general plan or zoning changes has previously been reviewed. Exceptions to this limitation on subsequent reviews might apply if sufficient details regarding the project were not available at the time of the general plan or zoning action was reviewed or if the project changes significantly.

See the discussion later in this chapter concerning review of general plans.

ALUC reviews are *not* advisory when the local jurisdiction elects to continue to submit all development projects to the commission rather than to incorporate the necessary criteria and review procedures into its own plans and policies.

Ministerial Actions

A question which sometimes arises, primarily with regard to the review of individual development projects, concerns the appropriateness of ALUC review of projects for which local government approval is ministerial (administrative) as opposed to discretionary. In essence, the question is why should an ALUC review a project if the local agency has no power to deny its approval?

The important factor to remember in these cases is that, even though the local agency may not be able to deny the project, it can set design conditions. In terms of airport compatibility, such conditions might include site layout, height limits, noise insulation, etc.

Public Utilities Code Section 21675.1(g) implicitly indicates that ministerial permits are subject to ALUC review prior to the adoption of a compatibility plan. This section allows ALUCs to exempt ministerial permits for single-family dwellings from review except where 25 percent or more of the parcels in a subdivision are undeveloped. After adopting a compatibility plan, a commission has the option of what types of ministerial actions, if any, it wishes to review. Subsequent to local agency action to make its general plan or specific plans fully consistent with the compatibility plan, ALUCs only review ministerial permits if the local agency agrees to submit them.

Subsequent Review of Related Projects

When a local agency and the ALUC have agreed that selected land use actions will continue to be reviewed, efforts should be made to avoid duplicative reviews. For example, if a specific plan has been prepared primarily to provide guidance for a major land use development proposal and the plan contains substantial detail regarding the development, subsequent review of the proposal itself should not ordinarily be necessary. Similarly, if the ALUC reviews a proposed zone change related to a particular development project, then later review of the project itself can be avoided if site design and other significant information is provided with the initial review.

CEQA Documents

When a California Environmental Quality Act (CEQA) document such as a negative declaration, mitigated negative declaration, or an environmental impact report has been prepared in conjunction with an action submitted for ALUC review, a copy should be provided to the commission along with other information on the project. ALUC staff can then excerpt portions which might be relevant to a compatibility determination by the commission.

Any person or entity other than a responsible agency may submit comments to a lead agency concerning any environmental effects of a project being considered by the lead agency (CEQA Guidelines, Section 15044).

ALUCs are not responsible agencies for the purposes of CEQA and thus are not legally required to respond to the CEQA document. ALUCs' sole legal responsibility is to make a compatibility determination regarding the project itself. However, ALUCs have the right, and authority, to provide comments to the lead agency. Under state law, ALUCs have the required "special expertise" concerning compatibility planning to provide comments on projects in proximity to an airport.

ALUCs should ask to be placed on the CEQA notification lists of all local agencies within the ALUCs' planning jurisdiction to ensure that they are notified of projects in the vicinity of airports. Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

CEQA documents circulated to ALUCs when a compatibility determination is not required should be considered the same as other voluntary referrals. They provide an opportunity for ALUCs to offer guidance to ensure the highest level of compatibility. In these circumstances, ALUCs are free to offer comments on the CEQA document, but have no authority to disapprove the project.



ALUCs are encouraged to comment on projects that might effect compatibility with airports even when projects are not required to be referred to the ALUC for a compatibility determination.

Nonaviation Development of Airport Property

State law does not specify whether ALUCs have authority to review projects involving nonaviation development on airport property. While the statutes give ALUCs the responsibility of reviewing airport master plans and certain other airport development plans for consistency with the commission's plan, ALUCs are also explicitly precluded from having authority over operation of any airport. A suggested perspective on this issue—one asserted by at least some ALUCs—is that they have the authority to review this type of development proposal in that it does not involve the “operation” of the airport. For public relations purposes if nothing else, airports probably should concede this point—it would be difficult to argue that certain nonaviation development should be allowed to occur on airport property when the same development in the same location would be judged incompatible if the property was privately owned.

The need for ALUC review of these projects should be treated much the same as with respect to individual development projects in the airport environs. That is, just as the focus for most off-airport development review is on general plans and specific plans, reviews of on-airport projects should primarily take place at the time the airport master plan is reviewed. Only when important details regarding a proposed development have changes or were not available at the time of the initial review would subsequent review be necessary.

PROCEDURAL CONSIDERATIONS

Information Required for Project Reviews

Most county and city planning departments have a form and/or a defined list of information which a project applicant must submit when requesting zoning variances or other types of local development approvals. ALUCs should have a similar form or list of information to be included when a project is submitted for commission review.

The text of these sections of the Government Code is included in Appendix A.

Without adequate information, the commission cannot fully assess whether a proposed land use action will be consistent with the commission's compatibility plan. Missing information also can result in the ALUC review being delayed if questions arise during a public meeting. The importance of having complete project data is emphasized in the ALUC statutes (Section 21675.2(c)):

“Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65946, inclusive, of the Government Code may constitute grounds for disapproval of actions, regulations, or permits.”

Although this particular section applies to ALUC review of actions prior to the adoption of a compatibility plan, the results can be the same with regard to actions submitted for a consistency review.

ALUC staffs should conduct a preliminary review of the information submitted on a project to assess whether the project is subject to ALUC review and, if so, whether the information is sufficiently complete to enable a consistency determination to be made. If additional information is needed, the project proponent should be so notified without undue delay. Staff also should determine whether the applicant has already requested reviews by other agencies (for example, an aeronautical hazard review conducted by the Federal Aviation Administration in accordance with Part 77 of the Federal Aviation Regulations). If at all possible, a situation to be avoided is a delay in ALUC action on a project because insufficient information is available at the time of the commission meeting.

Time Factors

Time is a factor with regard to the project review process in two ways:

At least one ALUC encourages proponents of individual development projects to submit information on their proposals directly to the commission. These items are then placed on the commission agenda for “discussion purposes only.” This process allows many compatibility issues to be resolved before the project is even submitted to the county or city for processing.

The statutes do not specify a response time limit for actions submitted to ALUCs on the basis of mutual agreement with affected jurisdictions. Such time limits should be indicated in the agreement, but 60 days is generally a reasonable duration.

- **Timing of Project Submittal**—In order to avoid unnecessary delays in the overall processing of a plan or project, the timing of when a plan or project is submitted to an ALUC for review is an important consideration. In general, plans and projects should be referred to the ALUC at the earliest reasonable point in time so that the commission's review can be duly considered by the local jurisdiction prior to formalizing its actions. Depending upon the type of plan or project and the normal scheduling of meetings, ALUC review can be done before, after, or concurrently with review by the local planning commission and other advisory bodies, but must be accomplished before final action by the board of supervisors, city council, or, in the case of some airport projects, the airport district board.
- **Response Time Requirement**—An airport land use commission must respond within 60 days of referral to local agency requests for a consistency determination on plans or projects for which submittal is mandatory. However, this response period does not begin until such time as all information necessary for accomplishment of the project review has been submitted to the commission. The 60-day response time is specified in Sections 21675.2(a) and 21676(d) of the State Aeronautics Act.

The consequence of the commission not acting within this time limit depends upon whether the commission has adopted a compatibility plan:

- If the commission *has not* adopted a compatibility plan, the proponent of a land use action, regulation, or permit may petition the court to compel the commission to act on the proposal (Section 21675.2(a)).
- If the commission *has* adopted a compatibility plan and the land use proposal involves a general plan, specific plan, zoning ordinance, or building regulation or is a proposed airport master plan, then the proposal is deemed consistent with the commission's plan (Section 21676(d)).

Review Fees

A 1989 amendment to the State Aeronautics Act granted ALUCs the authority to charge fees for review of land use proposals and airport plans (Section 21671.5(f)). However, a commission is only permitted to charge fees if it has adopted a compatibility plan for the airport involved. The fees charged cannot exceed the estimated reasonable cost of providing the review.

Responses to a late 1999 survey of ALUCs found that almost half (of the 19 responding to the survey) indicated that they charge fees. Some commissions charge a flat amount for any type of review. Others distinguish between different types of actions—for example, actions initiated by a public agency (e.g., a new general plan) versus ones which are privately initiated (e.g., individual development projects).

The fees charged for project reviews vary substantially from one ALUC to another. Some commissions charge small amounts which basically cover only the paperwork and other direct expenses. Other commissions base their fees on the typical number of staff hours involved in a project review and attempt to cover the full cost of the staff time.

ALUC Action Choices

Land Use Plans and Projects

An ALUC's choices of action on a land use plan or project submitted for review depends upon whether a compatibility plan has or has not been adopted. In either case, the commission has just two basic choices of action available.

- **Prior to Adoption of a Compatibility Plan**—If a commission has not yet adopted a compatibility plan, its choices of action are to *approve* or *disapprove* the matter submitted for review. This choice applies to any type of land use action, regulation, or permit, including general plans, specific plans, zoning ordinances, building regulations, and individual development projects. Absent having an adopted compatibility plan, the commission's authority to approve a land use action, regulation, or permit is limited by the law (Section 21675.1(c)). Approval requires that the commission find, based on substantial evidence in the record, that *all* of the following conditions exist:

- “The commission is making substantial progress toward completion of the plan.”
- “There is a reasonable probability that the action, regulation, or permit will be consistent with the plan being prepared by the commission.”
- “There is little or no probability of substantial detriment to or interference with the future adopted plan if the action, regulation, or permit is ultimately inconsistent with the plan.”

If all of these tests are not met, the commission legally cannot approve the proposal. However, only the first of these conditions is a significant procedural hurdle and very little is necessary to minimally satisfy it. ALUC adoption of a resolution setting an intended schedule for preparation of a compatibility plan should suffice for this purpose. Adoption of preliminary compatibility criteria for the specific airport is not necessary, although the commission’s resolution should at least refer to any generalized criteria it may have adopted or to this *Handbook* as the interim basis for project review. Once this test has been met, the characteristics of the project will determine whether the proposed action should be approved or disapproved.

If the ALUC concludes that it cannot take action because it does not have a compatibility plan and is not making progress toward preparation of one, then approval of the land use proposal would be subject only to action by the local agency unless court proceedings are initiated by an interested party (in accordance with Section 21679) as discussed later in this chapter.

► **After Adoption of a Compatibility Plan**—After the commission has adopted a compatibility plan for an airport, the nature of its review of land use matters changes. It now has—or should have—a set of policies and criteria by which to evaluate the proposal. The question then becomes one of determining whether the proposal is consistent or inconsistent with the compatibility plan.

The Aeronautics Act (Sections 21676(a) and 21676.5(a)) mentions only these two choices of action. No mention is made about finding a proposal *consistent with conditions attached*. Nevertheless, some ALUCs have found this to be an acceptable action choice. It is reasoned that such an action saves the applicant the step of returning to the commission with a revised proposal incorporating the commission’s conditions for approval. When a finding of consistency is made contingent upon certain conditions, the conditions should be limited in scope and described in a manner which allows compliance to be clearly assessed (e.g., the height of a structure). Also, regardless of which set of action choices an individual ALUC allows for itself, the compatibility plan’s policies should indicate what the action choices are.

Airport Plans

When an ALUC reviews an airport master plan, a plan for construction of a new airport (or heliport), or expansion of an existing airport, its basic choices

of action are once again to determine whether the proposal is *consistent* or *inconsistent* with the commission's plan. However, there are also associated actions which the commission may wish to take in conjunction with this determination.

- **Airport Master Plans**—When an inconsistency exists between a proposed airport master plan and an adopted compatibility plan, the commission has the option of first modifying its plan to reflect the assumptions and proposals of the master plan. Any such amendment to the compatibility plan is limited to once per calendar year and must follow the procedures outlined in Chapter 2 of this *Handbook*.
- **Plans for New Airports**—Unless a master plan was previously prepared—which typically occurs only when the facility will be publicly owned—the ALUC will not have an adopted compatibility plan for a proposed airport or heliport. As discussed later in this chapter, the consistency determination must therefore be based upon underlying noise and safety compatibility considerations. If the commission concludes that the plan for the proposed facility is consistent with these compatibility factors, it should then decide whether to prepare a compatibility plan for that facility to help protect it from incompatible land use development. If the proposed new airport or heliport will serve the general public (that is, if a State Airport Permit or Heliport Permit is required), then a compatibility plan for the facility should be adopted.
- **Airport Expansion Plans**—Plans for expansion of the runway system at a publicly owned airport normally will be based upon a long-range airport master plan previously reviewed by the commission. The consistency review thus need involve little more than a comparison of the proposed expansion project with the airport's master plan. In cases where a master plan does not exist or the expansion project is not included in it, the consistency determination should be based upon factors similar to those for review of plans for new airports.

Also see discussion in Chapter 2 regarding the types of airports for which compatibility plans are needed.

SUBSTANCE OF REVIEWS

If the adopted compatibility plan for an airport is thorough, the review of proposed local land use actions becomes relatively simple. Some degree of judgment is nonetheless almost always necessary, especially when the compatibility plan relies upon performance criteria rather than a format which specifically indicates the compatibility or incompatibility of individual classes of land uses.

Discussed below are some of the types of factors which an ALUC and its staff should examine in order to determine whether a proposed action is consistent with the commission's compatibility plan. The list is undoubtedly not totally inclusive. Almost any complex proposal will involve unique details which will need to be considered on a case-by-case basis.

If an ALUC elects to provide comments on an environmental document associated with a project it is reviewing, the focus of the comments should be on matters for which ALUCs have review authority under aeronautics law. Factors such as those listed here are suitable topics for comment.

Of all the types of land use actions which an ALUC reviews, general plans and specific plans require the most careful scrutiny.

General Plan and Specific Plan Consistency Reviews

When ALUCs evaluate county and city general plans and specific plans for consistency with the compatibility plan, a thorough review is essential for two reasons. One reason is that these local plans are often large and complex. Policies and other matters which may be significant with regard to airport compatibility are usually scattered throughout many sections of the plan—land use, housing, transportation, noise, safety, and open space elements, as well as the land use map, being among the likely candidates. The second, and perhaps most critical, reason is that once the ALUC has deemed the general plan or specific plan consistent with the compatibility plan, most subsequent land use actions and development proposals will not be reviewed by the commission unless the local agency agrees to submit them.

Concept of Consistency

A dictionary defines *consistency* as “agreement or harmony of parts or features to one another or a whole.” Legal definitions of the term depend upon the context in which it is used and have been the subject of numerous court cases. It is not a purpose of this *Handbook* to attempt to establish a legal definition for the term. Rather the intent here is to describe what *consistency* generally means with respect to airport land use compatibility planning.

Most importantly, a general plan or specific plan does not have to be *identical* to an ALUC compatibility plan in order to be *consistent* with it. The fundamental objective is that these local plans, together with any implementing policies contained in ordinances or regulations, must be capable of ensuring that future land use development will not conflict with compatibility plan criteria. The two specific tests which a general plan must meet to be considered *fully* consistent with the compatibility plan are:

- Elimination of any direct conflicts between the two plans; and
- Delineation of a mechanism or process for ensuring that individual land use development proposals comply with the ALUC’s adopted compatibility criteria.

Elimination of Direct Conflicts

Direct conflicts primarily involve general plan land use designations which do not meet the density (for residential uses) or intensity (for nonresidential uses) criteria specified in the compatibility plan, although conflicts with regard to other policies also may exist. Note, however, that a general plan cannot be found inconsistent with the compatibility plan because of land use designations which reflect existing land uses even if those designations conflict with the ALUC’s compatibility criteria. Because ALUCs have no authority over existing land uses, general plan land use designations which merely reflect the existing uses for such parcels are, in effect, excluded from requirements for general plan consistency with the ALUC plan.

See Chapter 3 for an extended discussion of the implications of existing land uses upon reviews of general plans and specific plans. Also addressed in Chapter 3 are other compatibility concerns such as redevelopment, reconstruction, and infill.

Assurance of Compliance with Compatibility Criteria

Elimination of direct conflicts between a county's or city's general plan and the ALUC's compatibility plan is not enough to guarantee that future land use development will adhere to the compatibility criteria set forth in the compatibility plan. An implementation process must also be defined either directly in the general plan or specific plan or by reference to a separately adopted ordinance, regulation, or other policy document. In many respects this implementation process is equivalent to a mitigation monitoring program established as a means of achieving compliance with provisions set forth in a CEQA document.

There are three facets to the process of ensuring compliance with airport land use compatibility criteria:

- **Delineation of Compatibility Criteria**—Airport land use compatibility criteria must be defined either in a policy document adopted by the county or city or through adoption of or reference to the ALUC's compatibility plan itself.
- **Identification of Mechanisms for Compliance**—The mechanisms by which applicable compatibility criteria will be tied to an individual development and continue to be enforced must be identified. A conditional use permit or a development agreement are two possibilities.
- **Indication of Review and Approval Procedures**—Lastly, the procedures for review and approval of individual development proposals must be defined. At what level within a county or city are compatibility approvals made: staff, planning commission, or governing body? The types of actions which are to be submitted to the ALUC for review and the timing of such submittals relative to the internal review and approval process also must be indicated.

Further details regarding each of these essential steps to making general plans and specific plans consistent with an ALUC compatibility plan are discussed in Chapter 5. A checklist of general plan consistency requirements is included in Table 5A. The list is not necessarily exhaustive, nor will every item will be applicable to every compatibility plan or every general plan. Rather, it is intended to provide basic guidance both to ALUCs in reviewing general plans and to counties and cities in preparing the necessary amendments and implementing actions.

Review of Zoning Ordinances and Building Regulations

ALUC review of zoning ordinances, building regulations, site design standards, and other implementing actions is particularly important because general plans often do not contain all of the policies necessary to be fully consistent with a compatibility plan. Instead, zoning ordinances, building regulations, and other local policies become the mechanisms for specific implementation of airport land use compatibility policies and procedures.



Before finding a general plan to be fully consistent with the compatibility plan, ALUCs should check that all applicable topics listed in Table 5A are addressed either in the general plan itself or in other implementing policy documents. Alternatively, as mentioned earlier in this chapter and further addressed in Chapter 5, local jurisdictions can elect to continue to refer all proposed land use actions within an airport influence area to the ALUC for review.

When reviewing these policy instruments, the same topics outlined in Table 4A should be considered. The significant difference is that land use ordinances and regulations usually include criteria, standards, and other details which can be quantitatively compared with related criteria in the compatibility plan. It is important, however, that the ALUC avoid becoming preoccupied with details which do not relate to airport compatibility concerns.

Review of Individual Development Projects

The type and scope of an individual development proposal significantly affects the nature of the review. Many small details play a part in the consistency determination. Among these are:

As previously noted, with some exceptions, ALUCs review individual development proposals only when they involve general plan or zoning changes or when the local jurisdiction agrees to submit these projects for review.

- **Residential Density**—The proposed number of dwelling units per acre should be assessed for compliance with compatibility plan criteria. This is usually a straightforward determination, although differences between gross and net acreage and the potential for secondary dwelling units must be taken into account. When using gross acreage as the basis for calculating densities, care must however be taken that portions of roads or open space on the edges of the development are not also included in the density or intensity calculations for an adjacent development.
- **Nonresidential Usage Intensity**—The potential number of people per acre who could occupy a nonresidential land use needs to be evaluated relative to the applicable limits. This number may not be clear from the proposal and can be particularly uncertain for speculative development projects (ones where the tenant has not been determined in advance of the construction). However, an estimate can usually be made using data such as: the number of parking spaces required for the use; maximum occupancy levels prescribed by building and fire codes; and surveys of similar existing uses. Assurance needs to be provided by means of the use permit, building permit, or other local approval that the intensity limits will not be exceeded if a different tenant and/or different use occupy the facility at a later date.
- **Site Plan**—The site plan for a proposed development is essential to review, particularly when a large project site straddles more than one ALUC compatibility zone. Whether variations in noise impacts and risk levels on different parts of a large site have been taken into account should be examined. Also, the size, location, and design of open land areas should be examined if ALUC policies require these features.
- **Height Limits**—The planned height of buildings, antennas, and other objects should be checked with respect to Federal Aviation Regulations Part 77 criteria if the development is close to the airport, situated within the runway approach corridors, or on land higher more than 150 feet above the airport elevation. The potential height of trees also may be a factor. Shielding provided by terrain or existing structures should be considered when determining acceptable heights, however.

Airport Plan Reviews

The substance of the review of airport plans—master plans, construction plans for new airports (and heliports), and expansion plans for existing airports—differs depending upon whether the commission has already prepared a compatibility plan for the facility. Consistency is easier to evaluate when a plan for the specific airport has already been created.

Plans for Existing or New Airports Having Adopted Compatibility Plans

The review of a master plan, construction plan, or expansion plan for an airport for which a compatibility plan has already been prepared should focus on differences between the plans. *Fundamentally, the question to be examined is whether any components of the airport plan would result in greater noise and safety impacts on surrounding land uses than are assumed in the adopted compatibility plan.* This concept implies that the airport plan does not have to be identical with the compatibility plan as long as the impacts are not increased or moved to previously less-impacted areas.

The airport plan review should focus on components of the plan which are associated with aircraft operations and which have off-airport impact implications. These components and the questions which should be asked about them include:

- **Forecasts**—Are the activity forecasts substantially higher than those in the compatibility plan or do they include a higher proportion of larger or noisier aircraft, including helicopters?
- **Runway Layout**—Are any new runways or helicopter takeoff and landing areas proposed? Are changes in runway length, landing threshold locations, or type of approach procedures planned? Where will pre-flight run-ups be conducted?
- **Flight Tracks**—Will new or modified facilities or aircraft operating procedures result in different aircraft traffic patterns or other changes in where or how high aircraft typically fly when approaching, departing, or flying near the airport?
- **Noise Impacts**—Will changes in any of the above items result in significantly increased noise impacts on surrounding lands?

Plans for any other airport facilities or activities associated with aircraft operations also can be considered in the ALUC review. Proposals for new taxiways or aircraft parking facilities near noise-sensitive land uses, for example, may warrant examination. In most cases, however, these facilities and their use pose no significant off-airport implications.

Noise associated with aircraft engine maintenance and testing is not an ALUC concern. These functions are not activities essential to the operation of aircraft at a particular airport. Rather, they are industrial activities and, as such, should be addressed by the local land use jurisdiction in the same manner as other industrial noise sources.

An airport development plan can indicate that impacts will be *less* than assumed in the compatibility plan and still be consistent with the compatibility plan. However, in cases where the differences are the result of new airport-owner policies regarding the future airfield configuration or use (elimination of a previously planned new runway, for example), the ALUC should update its plan accordingly.

As noted earlier in this chapter, an additional component of airport plans which ALUCs should review is proposed nonaviation development of airport property. Such uses include office buildings, industrial facilities, hotels, and other such uses that do not have a direct aeronautical function (see Glossary for definition of aviation-related use). The criteria against which such uses should be evaluated are the same as if the use were located on adjacent private property.

See Chapters 8 and 9 for further discussion of these types of noise issues.

Construction or Expansion Plans for Airports without Previous Compatibility Plans

When an ALUC reviews a plan for a new airport or heliport—or the expansion of an existing airport or heliport—in an existing land use setting, the basic issue is how will the airport fit into that setting. One way of looking at this issue is to ask: *would the existing or planned land uses be considered compatible with the airport or heliport if the latter were already in existence?* If not, what features or mitigation measures are included in the airport or heliport proposal to mitigate the noise and safety impacts on surrounding land uses? Specific questions for ALUCs to consider might include:

- **Runway Layout**—Does the proposed layout of aircraft landing areas attempt to limit impacts on surrounding land uses to the extent practical?
- **Flight Tracks**—Will the aircraft traffic pattern be limited to a single side of the runway because of land use compatibility or other factors? Are any other flight track or operational restrictions proposed to minimize off-airport impacts?
- **Aircraft Activity Characteristics**—What type and volume of aircraft activity is projected for the facility over the next 20 years or more? Are these characteristics compatible with surrounding land uses?
- **Property Acquisition**—Will fee title and/or easements be acquired on highly impacted property?

When reviewing the plans for a new airport or airport expansion, it is important that ALUCs evaluate the adequacy of the facility design (in terms of federal and state standards) only to the extent that the design affects surrounding land use. Also, commissions must base their review on the proposed design. ALUCs do not have the authority to require alterations to the airport plan or to make different assumptions regarding the future airport role and airfield configuration than are indicated in the airport's plan.

JUDICIAL ACTION

Provisions under Aeronautics Law

The State Aeronautics Act (Section 21679) explicitly provides for judicial action on ALUC matters only under very limited circumstances. Specifically, all of the following must apply:

- No compatibility plan has been adopted for the airport by an ALUC (Section 21679(a));
- The local general plan or any applicable specific plan does not accomplish the purposes of a compatibility plan (Section 21679(c));
- The local agency action in question must be a zoning change, a zoning variance, the issuance of a permit, or the adoption of regulation (Section 21679(a));

- The local action must affect the use of land within one mile of the boundary of a public airport in the county (Section 21679(a));
- The court proceedings must be initiated by an owner of land within two miles of the airport boundary or an organization with “a demonstrated interest in airport safety and efficiency” (Section 21679(f)); and
- The proceedings must be commenced within 30 days of the local agency action or as otherwise provided in state laws (Section 21679(d)).

If all of these conditions prevail, the court may issue an injunction to postpone the effective date of the local agency action. The postponement remains in effect until the local agency does one of the following:

- Adopts a resolution finding that the action is consistent with the purposes of the ALUC statutes;
- Amends the action to make it consistent with the purposes of the article; or
- Rescinds the action.

Despite the explicitness of this section of the Aeronautics Act, it is generally not regarded as precluding judicial actions on ALUC matters involving other sets of circumstances. ALUCs theoretically could initiate court proceedings to seek to enforce local agency compliance with provisions of the ALUC statutes. Whether most commissions have the means to do so is another matter. More common has been for such actions to be brought by pilots’ groups or other private parties having an interest in protecting the airport from incompatible development.

Mediation Process

Another mechanism which potentially could be used to address legal disputes on airport land use compatibility matters is a *mediation process*. State law (Government Code, Sections 66030-66031) provides for use of mediation as a method of resolving certain types of land use disputes. Included among listed circumstances is the “validity of any decision made pursuant to [ALUC statutes].” The law explicitly notes that “in establishing these mediation processes, it is not the intent of the Legislature to interfere with the ability of litigants to pursue remedies through the courts.”

Another section of state law (Code of Civil Procedures, Section 1730(a)) expands upon the mediation process by establishing a “pilot program” in the superior courts of four counties (Contra Costa, Fresno, San Diego, and Sonoma) “to assess the benefits of early mediation of civil cases.” Mediation is defined as “a process in which a neutral person or persons facilitate communication between disputants to assist them in reaching a mutually acceptable agreement” (Code of Civil Procedures, Section 1731(c)). With certain exceptions—notably, petitions for a writ of mandate or prohibition—all civil cases within the four counties are included in the program. The law became effective in January 2000 and the test period is to continue until January 2003.

The law requires that, between 90 and 150 days of the filing of a civil complaint, the court is to hold a status conference with the affected parties. The use of mediation as an alternative dispute resolution process is to be addressed at this conference. In two of the test counties (Fresno and Contra Costa), the court can order mandatory mediation. In the other two, the parties' acceptance of mediation is voluntary. The costs of the mediator, if selected from a court-appointed list, are borne by the court.